

## Relational Migration

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*Scholars frequently focus on the relative merits of one regulatory regime or another, or the comparative merits of one category of treatment or another. Little attention is paid, however, to the process of transitioning from one legal category to another and the experience—socially, psychologically, and legally—of that move. This Article takes the historical occasion of the Supreme Court’s decision in Obergefell v. Hodges<sup>1</sup> to consider a particularly salient example of this kind of change—what I call relational migration, the process of shifting from one relationship status to another. Since the Obergefell decision, at least 123,000 same-sex couples have married in the United States.<sup>2</sup> Although it is difficult to specify with certainty, many of these couples were in longstanding relationships when they got married, often in relationships for decades before getting legally married.<sup>3</sup> The process of legal status change to secure the*

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<sup>1</sup>Obergefell v. Hodges, 135 S. Ct. 2584, 2604 (2015) (“[T]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty.”).

<sup>2</sup>CHRISTY MALLORY & BRAD SEARS, WILLIAMS INST., ESTIMATING THE ECONOMIC IMPACT OF MARRIAGE FOR SAME-SEX COUPLES ONE YEAR AFTER *OBERGEFELL* 1 (June 2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Estimating-the-Economic-Impact-of-Marriage-for-Same-Sex-Couples-One-Year-after-Obergefell-5.pdf> [https://perma.cc/Y58E-RL5C].

<sup>3</sup>See Esther D. Rothblum et al., *Comparison of Same-Sex Couples Who Were Married in Massachusetts, Had Domestic Partnerships in California, or Had Civil Unions in Vermont*, 29 J. FAM. ISSUES 48, 62 (2008) (finding same-sex couples had been living together an average of eleven years prior to their marriage during the first year that same-sex marriages were available in Massachusetts); Ellen D.B. Riggle et al., *Impact of Civil Marriage Recognition for Long-Term Same-Sex Couples*, SEXUALITY RES. & SOC. POL’Y (June 10, 2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Civil-Marriage-Recognition-for-Long-Term-Same-Sex-Couples.pdf> [https://perma.cc/TK95-QFML] (“Survey findings suggest that many of the couples who marry immediately after a state changes its law are on average older and have been in their relationship for many years, compared to different-sex couples who marry. For example, the average age of same-sex couple members who married shortly after marriage became legal in France, Massachusetts, Illinois, and several provinces in Canada was approximately 10 years older than different-sex couple members marrying in the same period of time.” (citation omitted)). According to Gallup poll results issued nearly one year after the *Obergefell* decision, “roughly half of all cohabiting same-sex couples are married, up from 38% a year ago.” Jeffrey M. Jones, *Same-Sex Marriages Up One Year After Supreme Court Verdict*, GALLUP (June 22, 2016), <http://www.gallup.com/poll/193055/sex-marriages-one-year->

*constitutional right of marital recognition brings with it a host of legal and social considerations. It is critical to recognize and address these experiences—especially during times of legal transition—in order to foster resilience of migrating individuals and their relationships, and to safeguard valuable substantive rights more fully.*

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## I. INTRODUCTION

Legal scholars typically focus on the relative merits of one regulatory regime or another, or the comparative advantages of one category of treatment or another. Little attention is paid, however, to the process of transitioning from one legal category to another and the experience—socially, psychologically, and legally—of that move. That transition, as we see in a variety of social, economic, and political contexts, can bring with it important benefits and rights but also a variety of challenges that influence the experience of securing rights.

This Article takes the historical occasion of the Supreme Court’s groundbreaking decision in *Obergefell v. Hodges*<sup>4</sup> to consider a particularly salient example of this kind of change—what I call “relational migration,” the process of shifting from one relationship status to another. Since the

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supreme-court-verdict.aspx?version=print [https://perma.cc/6QFZ-5UM3]. It is likely that at least some of these married couples were in cohabiting relationships prior to marriage. See William Wan, *Gay Marriages Way Up a Year After U.S. Supreme Court Legalization*, WASH. POST (June 22, 2016), [https://www.washingtonpost.com/news/post-nation/wp/2016/06/22/gay-marriages-way-up-a-year-after-u-s-supreme-court-legalization/?utm\\_term=.5ce8c00ffb6f](https://www.washingtonpost.com/news/post-nation/wp/2016/06/22/gay-marriages-way-up-a-year-after-u-s-supreme-court-legalization/?utm_term=.5ce8c00ffb6f) [https://perma.cc/5D6N-JCA9] (noting that many same-sex couples “who were already living together got married in the past year,” even though others “stopped living together or consider[ed] themselves to be domestic partners”).

<sup>4</sup> *Obergefell*, 135 S. Ct. 2584.

*Obergefell* decision, at least 123,000 same-sex couples have married in the United States.<sup>5</sup> Although it is difficult to specify with certainty, many of these couples were in longstanding relationships when they got married, often for decades before entering into this legal transition.<sup>6</sup>

The metaphor of migration<sup>7</sup> animates this discussion of the experience of traversing a particularly robust border in the legal landscape—that between nonmarital and marital relationships. While different-sex couples have routinely crossed this boundary, until this point, researchers have had little contemporary opportunity to consider this kind of legal migration for same-sex couples, particularly in a context of nationwide marriage equality as occasioned by *Obergefell*.<sup>8</sup> Relational migration by same-sex couples can reveal the social and structural forces that shape various couples' movements into and experiences of marriage, especially those who marry later in a relationship.

In examining relational migration, this Article challenges a conception of legal frameworks as existing statically alongside one another and brings the transition process front and center. Moreover, this Article seeks to uncover fluid engagements between form and social practice within legal relationship categories, including marriage. This non-binaristic conception of legal categories further exposes ways in which formal access to rights is not self-effectuating. It can reveal the complex and multi-dimensional aspects of status change.

Legal status change to secure the constitutional right of marital recognition brings with it a range of social and legal challenges on individual, relationship, and group levels. These may include, for example, challenges posed by

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<sup>5</sup> MALLORY & SEARS, *supra* note 2.

<sup>6</sup> See Rothblum et al., *supra* note 3, at 62; Riggle et al., *supra* note 3.

<sup>7</sup> The migration metaphor resonates with the various movements we see in our contemporary world, with people and institutions routinely moving from one place to another. The literature of immigration and migration marks the distinctness of immigration and migration experiences. An example of this body of work are literary accounts of Asian migration experiences to the United States. See generally CARLOS BULOSAN, *AMERICA IS IN THE HEART* (1943); GROWING UP ETHNIC IN AMERICA (Maria Mazziotti Gillan & Jennifer Gillan eds., 1999); JESSICA HAGEDORN, *THE GANGSTER OF LOVE* (1996); JHUMPA LAHIRI, *INTERPRETER OF MALADIES* (1999); CHANG-RAE LEE, *A GESTURE LIFE* (1999). While I use the term “migration” metaphorically, literal migration processes, of course, entail a range of social, psychological, and legal challenges, in addition to physical ones.

<sup>8</sup> See KATHERINE FRANKE, *WEDLOCKED: THE PERILS OF MARRIAGE EQUALITY* 23–116 (2015) (comparing the same-sex marriage movement with marriage experiences of newly emancipated African Americans in the nineteenth century); see also Esther D. Rothblum et al., *Narratives of Same-Sex Couples Who Had Civil Unions in Vermont: The Impact of Legalizing Relationships on Couples and on Social Policy*, 8 *SEXUALITY RES. & SOC. POL.* 183, 183–84 (2011) (studying same-sex couples in Vermont who obtained civil unions during the first year Vermont had enacted civil union legislation to legalize same-sex relationships). Researchers have also not had an opportunity to engage in longitudinal studies in a context of nationwide marriage equality.

continuing social and legal discrimination.<sup>9</sup> This Article aims, in part, to widen our understanding of the *process* aspects of legal status change beyond technical legal process. I use the term “process” to include psychological and social dimensions of inquiry, in addition to legal ones.

While legal scholars have commented on gaps between formal and substantive equality and flaws in realizing the promise of important legal change, a focus on relational migration, embodied in an expanded view of process, permits a closer view of the various challenges and potential resiliencies that can occur during status transition.<sup>10</sup> This lens is especially valuable in contexts of legal transition representing social progress, where such opportunities may be overlooked.

A wider view of process encourages deeper thinking about fostering resilience in migrating individuals and their relationships, through strengthening various forms of social connection and organization. This greater resilience, in turn, can safeguard substantive rights more fully.<sup>11</sup>

Although the focus of this Article is to explore experiences of legal status change, I aim to speak to a variety of audiences, including those in law and the social sciences, with a goal of helping to chart future areas of inquiry and research in either domain. Also, this Article sets out to specify relational

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<sup>9</sup> See FRANKE, *supra* note 8, at 188–96. I defer for a separate discussion the question of how legal uncertainties associated with ongoing discrimination against LGBTQ communities affects relational migration.

<sup>10</sup> Martha Albertson Fineman has identified the universal condition of vulnerability as characterizing the human experience. See generally MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH* (2004) [hereinafter FINEMAN, *AUTONOMY*]. Within this approach, legal and policy reform focuses on increasing resilience through relationships and social institutions in the face of universal and inevitable vulnerability. She states:

Vulnerability initially should be understood as arising from our embodiment, which carries with it the ever-present possibility of harm, injury, and misfortune from mildly adverse to catastrophically devastating events, whether accidental, intentional, or otherwise. . . .

. . . .

Because we are positioned differently within a web of economic and institutional relationships, our vulnerabilities range in magnitude and potential at the individual level.

Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 8–10 (2008) [hereinafter Fineman, *Vulnerable Subject*] (engaging vulnerability theory to promote resilience through the law and other social mechanisms, and arguing that vulnerability theory has the potential to “describ[e] a universal, inevitable, enduring aspect of the human condition”).

<sup>11</sup> This focus on relational migration is not intended to suggest that the existence of gaps between formal and social equality should influence our view of the importance of the pursuit of formal equality in the marriage context or in any others.

migration, and is therefore more analytically descriptive than normative or prescriptive in nature.<sup>12</sup>

This Article proceeds in four parts. Following this introduction, Part II defines “relational migration.” Part III explores relational migration in action in the context of migration to and through marriage. This Part explores important features of relational migration by those experiencing marriage, including expectations for and intra- and extra-relational impacts of marriage. Part IV suggests opportunities for fostering resilience in individuals and couples experiencing relational migration and briefly concludes.

## II. DEFINING RELATIONAL MIGRATION

The concept of “relational migration” pinpoints the experience of a relationship’s formal legal status change, or in other words, the process of moving across a legal border from one category to another. One of the most stark delineations in the law of intimacy is the divide between marital and nonmarital units.<sup>13</sup> This divide—and the accompanying privileging of marriage—has been the subject of important and sustained critique by scholars, based on the marginalizing effect that this legal framework has on nonmarital families and on individuals.<sup>14</sup>

The U.S. Supreme Court’s decision in *Obergefell v. Hodges* has created the option for any number of the estimated 605,472 same-sex couples in this country to marry if they choose.<sup>15</sup> Some of these couples may have obtained civil unions or domestic partnerships before *Obergefell*,<sup>16</sup> while others may not have sought any formal legal recognition prior to the Court’s decision.<sup>17</sup>

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<sup>12</sup>This Article focuses on social and psychological experiences of relational migration. I leave legal questions arising in relational migration to another discussion.

<sup>13</sup>See, e.g., MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* 228–30 (1995) [hereinafter FINEMAN, *NEUTERED*] (critiquing the privileging of marriage).

<sup>14</sup>See, e.g., *id.*; NANCY D. POLIKOFF, *BEYOND (STRAIGHT AND GAY) MARRIAGE* (2008) (critiquing impact of the privileging of marriage on recognition of diverse family forms); Nancy D. Polikoff, *Why Lesbians and Gay Men Should Read Martha Fineman*, 8 AM. U. J. GENDER SOC. POL’Y & L. 167, 173–75 (2000); Laura A. Rosenbury, *Marital Status and Privilege*, 16 J. GENDER RACE & JUST. 769, 770–79 (2013) (critiquing privileging of marriage); Paula L. Ettelbrick, *Since When Is Marriage a Path to Liberation?*, OUT/LOOK, Fall 1989, at 9, 14–17 (arguing against the prioritization of marriage in LGBT rights movement); see also FRANKE, *supra* note 8, at 11.

<sup>15</sup>FERTILITY & FAMILY STATISTICS BRANCH, U.S. CENSUS BUREAU, FREQUENTLY ASKED QUESTIONS ABOUT SAME-SEX COUPLE HOUSEHOLDS 1 (Aug. 2013), [http://www.census.gov/hhes/samesex/files/SScplfactsheet\\_final.pdf](http://www.census.gov/hhes/samesex/files/SScplfactsheet_final.pdf) [<https://perma.cc/A6XE-QSMD>] (“The most recent estimate, from 2011 ACS data, shows 605,472 same-sex couple households.”).

<sup>16</sup>GARY J. GATES, WILLIAMS INST., SAME-SEX COUPLES IN US CENSUS BUREAU DATA: WHO GETS COUNTED AND WHY 4 (Aug. 2010), <http://williamsinstitute.law.ucla.edu>

### A. *Beyond Rights Binaries*

As with many migration contexts, the shift from a state of nonmarital to marital relationship brings with it a host of benefits and obligations.<sup>18</sup> The institution of marriage is commonly understood as exclusively binaristic—either in the status of being married or not.<sup>19</sup> Law and policy proceed from this view, pursuing vastly different approaches depending on the presence of the legal formality of marriage.<sup>20</sup>

The focus on relational migration, however, allows us to consider the ways in which form and social practice dynamically engage to produce legal categories, including marriage. Marriage is constructed by legal formalities and lived experience of—and apart from—these formalities. Indeed, the persistence of social aspects of marriage, apart from legal ones,<sup>21</sup> underscores the importance of studying this experience.

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/wp-content/uploads/Gates-Who-Gets-Counted-Aug-2010.pdf [https://perma.cc/M3WH-AXVZ] (finding that 15% of same-sex couples reported being in a civil union or domestic partnership in the 2010 census).

<sup>17</sup> See Riggle et al., *supra* note 3 (“Many same-sex couples had already established long-term relationships prior to the availability of civil marriage rights in the USA.”); see also PAMELA J. LANNUTTI, *EXPERIENCING SAME-SEX MARRIAGE* 5 (2014) (discussing a study focusing on same-sex couples’ decisions regarding whether or not to marry after Massachusetts legalized same-sex marriage). “Most same-sex couples who marry in the early period of the legal recognition of marriage in their location have been in a committed romantic relationship for a significant period of time.” *Id.* It is worth noting that the concept of relational migration applies across a variety of contexts, including when couples move from being married to being unmarried (i.e., divorce). As mentioned in *infra* note 38 and accompanying text, substantial psychological literature focuses on providing support for individuals and couples in the divorce context. I focus here, however, on the distinct social experiences of those claiming the formal right of marriage.

<sup>18</sup> *United States v. Windsor*, 133 S. Ct. 2675, 2694–95 (2013) (discussing the number of benefits tied to marriage, including, but not limited to, Social Security, employer-related health benefits, housing, taxes, and veterans’ benefits).

<sup>19</sup> See Courtney G. Joslin, *Marital Status Discrimination 2.0*, 95 B.U. L. REV. 805, 809, 811–14 (2015) (analyzing marital status discrimination); Nancy D. Polikoff, *Equality and Justice for Lesbian and Gay Families and Relationships*, 61 RUTGERS L. REV. 529, 530, 558 (2009) (analyzing marriage-critique literature concerning the divide between those individuals who are married and those who are not). See generally Serena Mayeri, *Marital Supremacy and the Constitution of the Nonmarital Family*, 103 CALIF. L. REV. 1277, 1279–80 (2015) (discussing historical treatment of nonmarital families).

<sup>20</sup> See *Windsor*, 133 S. Ct. at 2691.

<sup>21</sup> See Suzanne A. Kim, *Marital Naming/Naming Marriage: Language and Status in Family Law*, 85 IND. L.J. 893, 927–32 (2010) (discussing the persistence of gendered patterns of marital surname practices); Katharine B. Silbaugh, *The Practice of Marriage*, 20 WIS. WOMEN’S L.J. 189, 193–200 (2005) (discussing the traditional and evolving treatment of social practices incorporating concepts from common law marriage and nonmarital obligations); Deborah A. Widiss, *Changing the Marriage Equation*, 89 WASH. U. L. REV. 721, 771–81 (2012) (discussing gender norms in relation to marriage and same-sex marriage). For longstanding sociological literature on social practices of marriage, see

A non-binaristic conception of rights permits consideration of the ways in which formal access to rights is not self-effectuating. It can uncover the complex and multi-dimensional aspects of status change, especially in a context of social progress. While legal scholars have commented on gaps between formal and substantive equality and flaws in realizing the promise of important legal change,<sup>22</sup> a focus on relational migration permits a closer view of the various challenges (and potential resiliencies) that can result in a process of status change.

### B. *Typology of Relational Migration*

A focus on relational migration draws attention to a variety of benefits and challenges experienced by individuals, groups, and society in the process of a relationship's transition. The move to marriage provides access to a multitude of benefits, rights, and obligations. A focus on this move is less concerned with what those rights are and whether they should attach exclusively through marriage, than about the process of engaging those rights and the social experience of that engagement.<sup>23</sup> Relational migration can exist across a variety of legal categories. For this Article's purposes, I identify three descriptive frames for understanding the migration of couples into marriage.

For couples who have not sought forms of legal recognition prior to getting legally married, marriage promises the opportunity to move from a state of legal non-recognition to recognition. As others have put it, this move may be understood as the transition from "outlaws" to "in-laws."<sup>24</sup>

In contrast, many same-sex couples in this country have sought some form of legal recognition before getting legally married.<sup>25</sup> These couples, post-*Obergefell*, experience what may be called "shifts in-law." This includes those

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generally SUZANNE M. BIANCHI ET AL., *CHANGING RHYTHMS OF AMERICAN FAMILY LIFE* (2006), for an analysis of the division of labor in families based on time usage diary data; PHILIP BLUMSTEIN & PEPPER SCHWARTZ, *AMERICAN COUPLES* (1983), for a comparison of married couples, heterosexual couples who live together, and lesbian and gay couples, regarding financial, housework, and sexual issues; and ARLIE RUSSELL HOCHSCHILD & ANNE MACHUNG, *THE SECOND SHIFT* (2003), for an exploration of the division of labor of different-sex couples with two careers.

<sup>22</sup> For a discussion of such scholarship, see, e.g., *infra* note 41 and accompanying text.

<sup>23</sup> Of course, attaining benefits is an important motivation for marriage seekers. See KATRINA KIMPORT, *QUEERING MARRIAGE* 43–65 (2014); KIMBERLY D. RICHMAN, *LICENSE TO WED* 51–87 (2014).

<sup>24</sup> Rosie Harding has described changes from non-recognition to various forms of legal recognition in the United States and abroad as the movement from "outlaws" to "in-laws." ROSIE HARDING, *REGULATING SEXUALITY* 59 (2011); see also FRANKE, *supra* note 8, at 11 (describing shift from "outlaws to inlaws").

<sup>25</sup> See GARY J. GATES & TAYLOR N.T. BROWN, WILLIAMS INST., *MARRIAGE AND SAME-SEX COUPLES AFTER OBERGEFELL 2* (Nov. 2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Marriage-and-Same-sex-Couples-after-Obergefell-November-2015.pdf> [<https://perma.cc/2ELC-4YZN>].

who entered into domestic partnerships, civil unions, or marriages in other countries. Prior to the *Obergefell* decision, moreover, many couples received marriage certificates in multiple jurisdictions to secure relationship protection as comprehensively as possible.<sup>26</sup> This group also includes those who have sought relationship protection through contract, outside of formal status categories.<sup>27</sup> Many of the couples in either category above are also co-parents who face distinct legal challenges in securing parentage status.<sup>28</sup>

In circumstances when couples obtain new legal recognition or increased legal recognition, relationship migration may generally be viewed as “non-neutral,” insofar as these legal moves represent the opportunity for increased protection. As will be discussed below,<sup>29</sup> the availability of increased legal protection has been criticized for the greater opportunity it brings for legal regulation.<sup>30</sup> My concern here is less with the substantive arguments for or against various legal frameworks, but on the experience of transition from one framework to another. Understanding these forms of relationship transitions as “non-neutral” is important for identifying social forces that may shape experiences of relational status transition, as discussed below.

### C. Legal Consciousness and Vulnerability Frames

Legal consciousness and vulnerability theory serve as complementary analytical frames for understanding the social experience of those who migrate across legal relationship status categories and for illuminating further areas of study.

Studies of law and society and legal consciousness reach broadly to uncover ways that people experience the law by embracing, engaging, or

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<sup>26</sup> Deborah H. Wald, *Practicing LGBT Family Law in a Post-Obergefell World: Retroactivity and the Full Faith and Credit Clause*, FAM. ADVOC., Spring 2016, at 19, 21–22 (discussing challenges posed for couples having obtained multiple forms of legal recognition in different states).

<sup>27</sup> MARTHA M. ERTMAN, LOVE’S PROMISES: HOW FORMAL & INFORMAL CONTRACTS SHAPE ALL KINDS OF FAMILIES 111–52 (2015) (exploring the role of contracts in shaping a diverse range of families); Erez Aloni, *The Puzzle of Family Law Pluralism*, 39 HARV. J.L. & GENDER 101, 116–41 (2016) (discussing prenuptial agreements and cohabitation contracts between partners while touching on same-sex implications).

<sup>28</sup> See GARY J. GATES, WILLIAMS INST., LGBT PARENTING IN THE UNITED STATES 1, 3 (Feb. 2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf> [<https://perma.cc/4PX6-5FFT>] (citing the 2010 census indicating “[m]ore than 111,000 same-sex couples are raising an estimated 170,000 biological, step, or adopted children,” which includes more than 41,000 “couples who consider themselves to be spouses”); Douglas NeJaime, *Marriage Equality and the New Parenthood*, 129 HARV. L. REV. 1185, 1197, 1226, 1229–30 (2016).

<sup>29</sup> See *infra* Part III.

<sup>30</sup> See FRANK, *supra* note 8, at 11; MICHAEL WARNER, THE TROUBLE WITH NORMAL 96 (1999) (describing marriage as how the state “regulates and permeates people’s most intimate lives”).



resisting it.<sup>31</sup> Generally speaking, legal consciousness highlights people's interactions with and stance toward the law.<sup>32</sup> I use the concept of legal consciousness loosely to house various questions about people's interactions with and surrounding legal status change.<sup>33</sup>

In theorizing the under-studied process of relational migration, this analysis also engages vulnerability theory, and more specifically, its focus on supporting resilience.<sup>34</sup> Vulnerability theory paves the way for more supportive ways to address the vulnerabilities that touch everyone's lives.<sup>35</sup> This theory's attention to the condition of universal vulnerability, including for historically marginalized communities, and its attendant focus on encouraging greater social strength or capacity in the face of that vulnerability, provides a particularly generative framework for identifying opportunities for increasing resilience in relational migration.<sup>36</sup> Moreover, this intentionally multidisciplinary problem-solving approach is particularly well-suited to examining the many layers of relational migration.<sup>37</sup>

Vulnerability theory encourages us to think about how we can support relationship and individual resilience during relational transition. For example, a longstanding counseling practitioner literature exists on how to support families during the process of other kinds of relationship change, such as

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<sup>31</sup> See PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW* 45 (1998) (categorizing one's relationship with the law as "*before* the law," "*with* the law," and "*against* the law"); see also Patricia Ewick & Susan Silbey, *Narrating Social Structure: Stories of Resistance to Legal Authority*, 108 AM. J. SOC. 1328, 1331 (2003) (exploring resistance to legal authority through storytelling).

<sup>32</sup> See Susan Silbey, *Legal Consciousness*, in *THE NEW OXFORD COMPANION TO LAW* 695, 695–96 (Peter Cane & Joanne Conaghan eds., 2008) ("The concept legal consciousness is used to name analytically the understandings and meanings of law circulating in social relations. Legal consciousness refers to what people do as well as say about law.").

<sup>33</sup> See, e.g., JASON PIERCESON, *SAME-SEX MARRIAGE IN THE UNITED STATES* 38 (2013) ("Socio-legal scholars define legal consciousness as a form of legal awareness and activity by average citizens, as opposed to traditional legal actors."); see also EWICK & SILBEY, *supra* note 31, at 46 (defining legal consciousness as "produced and revealed in what people *do* as well as what they *say*," "constituted and expressed in the practical knowledge individuals have of social life").

<sup>34</sup> See Fineman, *Vulnerable Subject*, *supra* note 10, at 13 ("The state facilitated institutions that have grown up around vulnerability are interlocking and overlapping, creating the possibility of layered opportunities and support for individuals, but also containing gaps and potential pitfalls. These institutions collectively form systems that play an important role in lessening, ameliorating, and compensating for vulnerability."). Fineman describes "networks of relationships" as providing "support and strength" in the face of vulnerability. *Id.* at 15.

<sup>35</sup> FINEMAN, *AUTONOMY*, *supra* note 10, at 288.

<sup>36</sup> *Id.* at 8–10, 20–21 (discussing universal vulnerability and consideration of vulnerability in the context of marginalized communities); see also Martha Albertson Fineman, *Vulnerability, Resilience, and LGBT Youth*, 23 TEMP. POL. & C.R. L. REV. 307, 309–10 (2014).

<sup>37</sup> Fineman, *Vulnerable Subject*, *supra* note 10, at 9–10.

relationship dissolution.<sup>38</sup> Another body of guidance addresses how to support and counsel gay and lesbian parent families.<sup>39</sup> At this historical moment, nationwide marriage equality also makes it important to address legal and psychological challenges arising in relationship dissolution for same-sex couples.<sup>40</sup> Vulnerability theory's focus on resilience provides a framework for understanding complexities that arise in relational migration.

### III. RELATIONAL MIGRATION IN ACTION: MIGRATION TO AND THROUGH MARRIAGE

This Part analyzes the process of relational migration, with a focus on crossing the boundary between nonmarital to marital relationships by same-sex couples. Instead of discussing the important substantive benefits that accompany the status of marriage, this analysis identifies a range of opportunities for fostering resilience in the individuals and relationships experiencing relational migration.

To situate this analysis further, I note that discussions abound in antidiscrimination law and legal scholarship on gaps between social and formal equality in a variety of domains.<sup>41</sup> This understanding is critical to

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<sup>38</sup> See generally MARIAN H. MOWATT, *DIVORCE COUNSELING* 119–46 (1987); JUDITH S. WALLERSTEIN & JOAN BERLIN KELLY, *SURVIVING THE BREAKUP* (1980); Esther Oshiver Fisher, *A Guide to Divorce Counseling*, 22 FAM. COORDINATOR 55, 56 (1973); Florence W. Kaslow, *Divorce and Divorce Therapy*, in HANDBOOK OF FAMILY THERAPY 662 (Alan S. Gurman & David P. Kniskern eds., 1981); Joan B. Kelly & Robert E. Emery, *Children's Adjustment Following Divorce: Risk and Resilience Perspectives*, 52 FAM. REL. 352 (2003).

<sup>39</sup> See, e.g., Abbie E. Goldberg & Aline Sayer, *Lesbian Couples' Relationship Quality Across the Transition to Parenthood*, 68 J. MARRIAGE & FAM. 87, 88 (2006) (“Lesbian couples face particular difficulties because of their sexuality, such as discrimination or lack of recognition of their family from professionals and services as well as from their extended families and communities. Contextual sources of support may be particularly important for this population.” (citation omitted)); Abbie E. Goldberg & Randi Garcia, *Predictors of Relationship Dissolution in Lesbian, Gay, and Heterosexual Adoptive Parents*, 29 J. FAM. PSYCHOL. 394, 401 (2015) (“Parents want adoption-related information, support, and counseling that can help them to manage their children’s behaviors but also help them manage their relationships.” (citations omitted)); see also Ellen D.B. Riggle et al., *Advance Planning by Same-Sex Couples*, 27 J. FAM. ISSUES 758, 772, 775 (2006) (noting that social service providers should be aware of legal impediments couples face to counsel them properly).

<sup>40</sup> See, e.g., Suzanne A. Kim & Edward Stein, *Gender, Law and Social Perspectives in Same-Sex Divorce and Dissolution*, in LGBTQ DIVORCE AND RELATIONSHIP DISSOLUTION (Abbie Goldberg & Adam Romero eds., forthcoming 2017); see also Allison Anna Tait, *Divorce Equality*, 90 WASH. L. REV. 1245, 1246–53 (2015) (considering equitable distribution in the context of same-sex divorce).

<sup>41</sup> KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* 184–96 (2006) (addressing the social and legal imperative to “cover” to assimilate to dominant norms, notwithstanding advances in civil rights law); see RACHEL F. MORAN, *INTERRACIAL INTIMACY* 61–75, 184–96 (2001) (examining the persistence of racial segregation in

drawing attention to the gaps that exist between law on the books and law on the ground. Alongside this perspective, however, we must examine the movement across legal status borders. Even with legal reform aimed at better unifying formal and substantive equality in various domains, transitions between legal categories will always exist, introducing unique experiences for those involved.

This discussion draws the concept of procedural justice into consideration of relational migration, including social and psychological dimensions in conceptualizing process.<sup>42</sup> Focusing on the experience of relational migrants sheds further light on the independent importance of fair process and the consequences of hidden process costs or impacts.<sup>43</sup> Greater appreciation for an expanded understanding of process can help bolster a more complete justice for relational migrants and others who cross legal categories.

While extensive literatures have developed regarding the social experiences of intimacy outside of and inside of marriage,<sup>44</sup> there has been very little study of the transition across the marital boundary by same-sex couples. Since the Massachusetts Supreme Judicial Court in *Goodridge v. Department of Public Health* held, in 2003, that same-sex couples are constitutionally entitled to marriage access,<sup>45</sup> a body of literature has emerged concerning the impacts of marriage on U.S. couples.<sup>46</sup> This research has generally been conducted on an individual-state basis, based on the piecemeal

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intimacy); see also, e.g., Solangel Maldonado, *Discouraging Racial Preferences in Adoptions*, 39 U.C. DAVIS L. REV. 1415, 1428–29 (2006) (“While more Americans than ever expressly subscribe to an antidiscrimination norm and are expressly committed to racial equality and diversity, cognitive bias studies reveal a much larger unconscious preference among whites for whites than their explicit preferences suggest. These biases against minority groups influence not only perceptions, but also result in disparate treatment of members of those groups despite the actor’s explicit commitment to racial equality.” (footnotes omitted)).

<sup>42</sup> See Frank I. Michelman, *Formal and Associational Aims in Procedural Due Process*, in DUE PROCESS 126, 127–28 (J. Roland Pennock & John W. Chapman eds., 1977); see also E. ALLEN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* 170–72 (1988).

<sup>43</sup> See Michelman, *supra* note 42, at 127–28. Our procedural due process jurisprudence demands that we examine the fairness of process in context. See, e.g., *Goldberg v. Kelly*, 397 U.S. 254, 268–69 (1970) (“The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.”). I leave for another discussion the role of procedural justice as it relates to legal aspects of relational migration.

<sup>44</sup> See generally BLUMSTEIN & SCHWARTZ, *supra* note 21; HOCHSCHILD & MACHUNG, *supra* note 21; Sondra E. Solomon et al., *Money, Housework, Sex, and Conflict: Same-Sex Couples in Civil Unions, Those Not in Civil Unions, and Heterosexual Married Siblings*, 52 SEX ROLES 561 (2005) (comparing same-sex couples who had civil unions in Vermont, same-sex couples who had not had civil unions, and married heterosexual couples).

<sup>45</sup> *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941, 969 (Mass. 2003).

<sup>46</sup> See a discussion of this research in *infra* Part III.

progression of marriage rights in this country.<sup>47</sup> Only now is qualitative research being conducted in the context of nationwide marriage equality, however, and none of the research is yet longitudinal, which would help capture the impact of marriage over the course of relationships.<sup>48</sup> Research in this developing area, however, highlights important experiences of same-sex couples in transitions into marriage and in this transitional moment in history. In this Part, I provide highlights of this literature and foreground questions to be explored at the intersection of legal consciousness and vulnerability theory.

In this Article, I do not enter the debate on whether the state should favor marriage as a form of intimate organization.<sup>49</sup> Regardless of whether marriage should exist as a state-mediated institution, and whether this institution should occupy a privileged status in the legal landscape, it is not a stretch to

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<sup>47</sup> LANNUTTI, *supra* note 17; CHRISTOPHER RAMOS ET AL., WILLIAMS INST., THE EFFECTS OF MARRIAGE EQUALITY IN MASSACHUSETTS: A SURVEY OF THE EXPERIENCES AND IMPACT OF MARRIAGE ON SAME-SEX COUPLES 2 (May 2009), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Ramos-Goldberg-Badgett-MA-Effects-Marriage-Equality-May-2009.pdf> [<https://perma.cc/4B2B-R2B6>] (studying same-sex couples who got married in Massachusetts); M.V. Lee Badgett, *Social Inclusion and the Value of Marriage Equality in Massachusetts and the Netherlands*, 67 J. SOC. ISSUES 316, 325–31 (2011) (exploring experiences of same-sex married couples in Netherlands and Massachusetts); Sharon S. Rostosky et al., *Same-Sex Couples' Decisions and Experiences of Marriage in the Context of Minority Stress: Interviews from a Population-Based Longitudinal Study*, 63 J. HOMOSEXUALITY 1019, 1021–22 (2016) (exploring the experiences of same-sex couples with long term marriages); Rothblum et al., *supra* note 3, at 51–54; Ellen Schecter et al., *Shall We Marry? Legal Marriage as a Commitment Event in Same-Sex Relationships*, 54 J. HOMOSEXUALITY 400, 401–07 (2008); Riggle et al., *supra* note 3 (researching impacts on civil marriages of couples who were among first to obtain civil unions in Vermont in 2000 and 2001).

<sup>48</sup> A forthcoming book project discusses these early experiences with marriage. See SUZANNE A. KIM, MARRIAGE EQUALITIES: GENDER AND SOCIAL NORMS IN SAME-SEX AND DIFFERENT-SEX MARRIAGE (forthcoming) (tentatively titled); see also Suzanne A. Kim & Katherine A. Thurman, *Social Rites of Marriage*, 17 GEO. J. GENDER & L. (forthcoming 2016) (on file with author) (discussing themes in couples' early encounters with marriage as same-sex marriage became more prevalently, and then entirely, available in the United States). For quantitative research post-*Obergefell*, see generally GATES & BROWN, *supra* note 25, and MALLORY & SEARS, *supra* note 2, for an estimation of the economic impact of marriage one year after *Obergefell*.

<sup>49</sup> See Martha Albertson Fineman, *Why Marriage?*, 9 VA. J. SOC. POL'Y & L. 239, 246 (2001) (critiquing the centrality of marriage “in spite of the fact that the traditional marital family has become a statistical minority of family units in our society”); see also Polikoff, *supra* note 14, at 167 (“Through reading Martha Fineman, it becomes possible to see that the equality model that seeks a right to marry on equal terms with heterosexuals, and the incantation of ‘choice,’ as in ‘lesbians and gay men should have the choice to marry,’ fail to envision a truly transformative model of family for all people. It is that transformative model that Professor Fineman provides.” (footnotes omitted)). But see William N. Eskridge, Jr., *A Social Constructionist Critique of Posner's Sex and Reason: Steps Toward a Gaylegal Agenda*, 102 YALE L.J. 333, 356–57 (1992) (book review) (noting that marriage equality could provide a future model for heterosexual marriages since “in a same-sex marriage there can be no division of labor according to gender”).

acknowledge that, as a descriptive matter, marriage does exist as a state-mediated institution and that marriage does occupy a privileged status in the legal landscape (for better or for worse).<sup>50</sup> Even under marriage-neutral or marriage-skeptical outlooks, couples who do decide to get married should not be impeded in their ability to secure this right based on under-examined aspects of the relational migration experience.<sup>51</sup>

Based on a broader view of process, this Part summarizes key findings concerning transitional experiences with marriage, including those regarding: (1) expectations for marriage; (2) intra-relational impacts of marriage (including effects on the self and on the couple); and (3) extra-relational impacts of marriage, including relationships with social networks (including friends and families of origin), LGBTQ communities, and society in general. Research findings in these areas also implicate impacts and workings of “minority stress,” effects of legal access, and influence of socio-economic status differentials.

### A. Marital Expectations

Expectations may play an important role in the transition experiences of couples, as the connection between expectation and experience may inform the lived reality of marriage for individuals and couples. As same-sex marriage increasingly became more available in this country over the past dozen years, researchers have had increased opportunity to gather information about people’s expectations about marriage’s impacts.<sup>52</sup>

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<sup>50</sup> See Andrew J. Cherlin, *The Deinstitutionalization of American Marriage*, 66 J. MARRIAGE & FAM. 848, 855 (2004) (“[A]lthough the practical importance of being married has declined, its symbolic importance has remained high, and may even have increased.”); Rosenbury, *supra* note 14, at 770 (“States have long permitted some, but not others, to obtain the legal status of spouse.” (emphasis added)); see also *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013) (noting state regulation of “the incidents, benefits, and obligations of marriage”).

<sup>51</sup> See Suzanne A. Kim, *Skeptical Marriage Equality*, 34 HARV. J.L. & GENDER 37, 38 (2011) (noting that critique of marriage’s privileged status can co-exist with an interest in sex-neutral eligibility to marry); see also Katherine M. Franke, Commentary, *The Domesticated Liberty of Lawrence v. Texas*, 104 COLUM. L. REV. 1399, 1414 (2004) (critiquing primacy of marriage but arguing that it should be available to everyone); Polikoff, *supra* note 14, at 169 (same). The most persuasive legal argument for marriage equality was not that marriage should be the only way for people to organize their family lives. Indeed, it was that if marriage is to be made available, it should be available regardless of the sex of one’s partner. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2604 (2015) (“[T]he right to marry is a fundamental right inherent in the liberty of the person, and . . . couples of the same-sex may not be deprived of that right and that liberty.”); see also *Windsor*, 133 S. Ct. at 2693 (“DOMA . . . violates basic due process and equal protection principles . . .”).

<sup>52</sup> Literature addressing motivations for marriage is certainly relevant to expectations, but I focus, for purposes of this discussion, on the subtly different question of anticipated effects of marriage. For an extensive discussion about motivations for marriage, see

Marital expectations have generally centered on marriage's legitimizing effects, as reflected in the distribution of substantive benefits and social recognition (both vis-à-vis others and within the relationship). In their 2015 qualitative study involving cohabiting same-sex couples from forty-seven states, Stephen Haas and Sarah Whitton found that marriage was perceived as important most commonly because it confers financial and legal benefits, shows relationship legitimacy, and demonstrates the same commitment as different-sex couples.<sup>53</sup> These findings correspond with other qualitative studies addressing reasons for marrying, which include "[l]egal protection and social validation."<sup>54</sup>

In earlier studies, Pamela Lannutti surveyed partnered and unpartnered LGBT community members in 2003 after the Massachusetts Supreme Judicial Court's decision in *Goodridge*,<sup>55</sup> but before marriage licenses began issuing in the state,<sup>56</sup> to ask how legally recognized same-sex marriage might change individuals' romantic relationships or the way they think about romantic relationships.<sup>57</sup> Study participants understood anticipated impacts of marriage in three related realms—regarding same-sex relationships themselves, “the LGBT community, and the relationship between the LGBT community and heterosexual others.”<sup>58</sup>

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RAMOS ET AL., *supra* note 47, at 5, for a list of reasons individuals in Massachusetts identified for choosing to marry, including “love and commitment,” seeking “legal status,” “wanting . . . society [to] know about lesbian or gay relationships,” and factors related to children; KIMPORT, *supra* note 23, at 20–81; and RICHMAN, *supra* note 23, at 154, for a discussion of motivations of those seeking marriage in California and Massachusetts.

<sup>53</sup> Stephen M. Haas & Sarah W. Whitton, *The Significance of Living Together and Importance of Marriage in Same-Sex Couples*, 62 J. HOMOSEXUALITY 1241, 1241, 1252–53 (2015) (drawing on “qualitative data from 526 individuals in cohabiting same-sex relationships across 47 states” to examine, in part “the perceived importance of legal marriage to the relationship” and finding six dominant themes: “(1) legal benefits and financial protections, (2) relationship legitimacy, (3) equal commitment as different-sex couples, (4) ‘we don’t need marriage, we’re already committed . . . but we want equal rights,’ (5) couple validation, and (6) personally important” (alteration in original)).

<sup>54</sup> Rostosky et al., *supra* note 47, at 1019.

<sup>55</sup> *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941 (Mass. 2003).

<sup>56</sup> See, e.g., Pamela J. Lannutti, *For Better or Worse: Exploring the Meanings of Same-Sex Marriage Within the Lesbian, Gay, Bisexual and Transgendered Community*, 22 J. SOC. & PERS. RELATIONSHIPS 5, 8 (2005) [hereinafter Lannutti, *For Better*]; Pamela J. Lannutti, *The Influence of Same-Sex Marriage on the Understanding of Same-Sex Relationships*, 53 J. HOMOSEXUALITY 135, 138–39 (2007) [hereinafter Lannutti, *Influence*] (interviewing LGBT individuals about expected influences of the new availability of marriage).

<sup>57</sup> See Lannutti, *For Better*, *supra* note 56, at 5; Lannutti, *Influence*, *supra* note 56, at 139–40.

<sup>58</sup> Lannutti, *For Better*, *supra* note 56, at 16; Lannutti, *Influence*, *supra* note 56, at 140.

Individuals reported viewing marriage as a “step toward more normative status for same-sex couples”<sup>59</sup> and predominantly viewed marriage as representing “an aspect of legal equality for LGBT people.”<sup>60</sup> According to Lannutti, participants also “welcomed the financial benefits of same-sex marriage” and the “protection of families in times of crisis” through marriage.<sup>61</sup> Indeed, persuasive legal arguments for marriage equality have long rested on the inimitably legitimizing effect of marriage (as opposed to other forms of relationship recognition like civil unions, domestic partnerships, or, of course, none at all).<sup>62</sup> For example, Federal District Judge Vaughn Walker’s findings of fact in what was then called *Perry v. Schwarzenegger*, which invalidated Proposition 8 as unconstitutional per the Equal Protection Clause and Due Process Clause, clearly identified the disparity between “domestic partnership” and “marriage,” finding that “[d]omestic partnerships lack the social meaning associated with marriage, and marriage is widely regarded as the definitive expression of love and

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<sup>59</sup> Lannutti, *Influence*, *supra* note 56, at 137.

<sup>60</sup> Lannutti, *For Better*, *supra* note 56, at 9. For a discussion of the perspectives on marriage equality of adolescents and young adult children of LGBT parents, see Abbie E. Goldberg & Katherine A. Kuvalanka, *Marriage (In)equality: The Perspectives of Adolescents and Emerging Adults with Lesbian, Gay, and Bisexual Parents*, 74 J. MARRIAGE & FAM. 34, 34 (2012). “More than two thirds of participants voiced unequivocal support for marriage equality, citing numerous legal and symbolic benefits that their families were denied.” *Id.*

<sup>61</sup> Lannutti, *For Better*, *supra* note 56, at 9. *But see* RAMOS ET AL., *supra* note 47, at 2, 5 (reporting that in a 2009 survey of 558 individuals married to same-sex partners in Massachusetts, almost all respondents reported that “love and commitment” was a reason for marrying, and “[l]ess than one in five respondents indicated that issues pertaining to finances . . . played an important role in their decision to marry”).

<sup>62</sup> *See, e.g., Obergefell v. Hodges*, 135 S. Ct. 2584, 2601–02 (2015) (“As the State itself makes marriage all the more precious by the significance it attaches to it, exclusion from that status has the effect of teaching that gays and lesbians are unequal in important respects.”); *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013) (“The avowed purpose and practical effect of the law here in question are to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States.”); *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 936 (N.D. Cal. 2010) (“[Historian Nancy] Cott explained that domestic partnerships cannot substitute for marriage because domestic partnerships do not have the same social and historical meaning as marriage and that much of the value of marriage comes from its social meaning.”), *aff’d sub nom. Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012), *vacated sub nom. Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013); *see also id.* at 929 (“California’s provision of a domestic partnership—a status giving same-sex couples the rights and responsibilities of marriage without providing marriage—does not afford plaintiffs an adequate substitute for marriage and, by disabling plaintiffs from marrying the person of their choice, invidiously discriminates, without justification, against plaintiffs and others who seek to marry a person of the same sex.”).

commitment in the United States.”<sup>63</sup> Similar critiques arose regarding the concept of “civil union.”<sup>64</sup>

Lannutti’s research regarding Massachusetts same-sex marriage revealed a number of tensions within participants’ responses concerning impacts of marriage on same-sex relationships, on the LGBT community, and on relationships between the LGBT community and the heterosexual community.<sup>65</sup> For example, study participants expected marriage to strengthen same-sex relationships<sup>66</sup> and to make their relationships “real to themselves,”<sup>67</sup> but also expressed some concern about making sure that people do not marry for the “wrong reasons” due to the excitement of the opportunity for same-sex marriage.<sup>68</sup>

In the realm of projected impacts on couples’ relationships with the LGBT community, individuals saw legal recognition as “creating a sense of validation for the community and its members” and as “strengthening the LGBT community through unification.”<sup>69</sup> In addition to these expectations, individuals expressed a concern about “stigma” against those not getting married and “nonmarried couples losing the LGBT community’s support.”<sup>70</sup>

Expected impacts on relationships with “heterosexual others” also revealed tensions, with some viewing “same-sex marriage . . . as a tool to heal perceived rifts between the LGBT community and heterosexual others by reducing homophobia and ignorance and increasing acceptance and integration,” and others expressing concerns about same-sex marriage being

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<sup>63</sup> *Perry*, 704 F. Supp. 2d at 970.

<sup>64</sup> As pioneering civil rights attorney Mary Bonauto has written, regarding the legal debate in Massachusetts considering whether a “civil union” scheme would meet the constitutional requirements the Massachusetts Supreme Judicial Court articulated in *Goodridge v. Department of Public Health*:

Marriage is not just about recognition of loving and committed relationships, nor is it just about legal protections. For some, it is also about equal citizenship. During the constitutional conventions in Massachusetts that considered *Goodridge*, both LGBT and non-LGBT people joined together to fight ferociously a plan to substitute civil unions for the marriage ruling in *Goodridge*, even though at the level of state law the bundle of rights would have been largely the same under marriage or the civil unions proposal. While I believe the dilution of rights would still have been tangible, others who could not engage with that legal analysis felt this explicit proposal for a government-approved separate and unequal institution was an affront to their citizenship.

Mary L. Bonauto, *Goodridge in Context*, 40 HARV. C.R.-C.L. L. REV. 1, 6 (2005) (emphasis omitted) (footnote omitted).

<sup>65</sup> Lannutti, *For Better*, *supra* note 56, at 10–11.

<sup>66</sup> *Id.* at 10.

<sup>67</sup> Lannutti, *Influence*, *supra* note 56, at 140.

<sup>68</sup> Lannutti, *For Better*, *supra* note 56, at 11.

<sup>69</sup> *Id.* at 11–12.

<sup>70</sup> *Id.* at 12.



“used as a weapon by a segment of mainstream society to hurt the LGBT community.”<sup>71</sup>

It is important to note that Lannutti’s research was conducted when no state was yet granting marriage licenses to same-sex couples, as Massachusetts had not yet begun issuing licenses although the Massachusetts Supreme Judicial Court had issued its decision in *Goodridge*.<sup>72</sup> In contrast, Haas and Whitton’s research was conducted in 2012, when same-sex marriage was a much more potent reality.<sup>73</sup> This may have played a role in any differences in participants’ optimism about expected impacts of marriage.

### B. Intra-Relational Impacts

Research about perceived effects of marriage on an intra-relationship level is also relevant to understanding relational transition processes. This early research has noted effects of marriage on the self, couples’ relationships, and interactions with others and society, and offers opportunities to consider how to support individual and relational resilience.

*Self.* Regarding marriage’s effects on the self, emerging research shows identity-based gains as well as challenges. In the Civil Union Participants Project Longitudinal Enhanced Study (CUPPLES study) of couples who obtained civil unions in Vermont during the first year that such legal recognition was possible in the United States,<sup>74</sup> long-term couples who were subsequently in civil marriages as of 2013 reported “higher levels of LGB

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<sup>71</sup>*Id.* at 15. Lannutti’s findings in her 2005 study are compatible with those in her 2008 study, in which she found that the study participants, who were Massachusetts residents in same-sex relationships, most of whom were legally married, were attracted to legally recognized marriage as a means of gaining civic and social network recognition for their relationships and for personal reasons. Pamela J. Lannutti, *Attractions and Obstacles While Considering Legally Recognized Same-Sex Marriage*, 4 J. GLBT FAM. STUD. 245, 251–54 (2008).

<sup>72</sup>*See, e.g.,* Lannutti, *For Better*, *supra* note 56, at 10–11.

<sup>73</sup>Haas & Whitton, *supra* note 53, at 1245–46. Haas and Whitton collected data between April and November 2012, *id.*, at a time when six states and the District of Columbia already allowed same-sex marriage, *State-by-State History of Banning and Legalizing Gay Marriage, 1994–2015*, PROCON.ORG, <http://gaymarriage.procon.org/view.resource.php?resourceID=004857> [<https://perma.cc/K6FB-GLST>] (last updated Feb. 16, 2016).

<sup>74</sup>Riggle et al., *supra* note 3. The CUPPLES study is

a longitudinal, population-based study of same-sex couples who came from all over the United States to obtain civil unions in Vermont between July 2000 and June 2001, the first year that such legislation was available anywhere in the United States (and before any nation in the world had same-sex marriage). Civil union couples were compared with same-sex couples in their friendship network who had not obtained civil unions at the time; these couples were resurveyed 3 years later. Couple members from the original study were recontacted in 2013 for the Wave 3 data collection.

Rostosky et al., *supra* note 47, at 1021–22 (citations omitted).

identity centrality” than those not married, and “[r]esiding in a state that recognized civil marriage was associated with lower levels of LGB identity concealment, a less difficult process accepting one’s LGB identity, and less vigilance and isolation.”<sup>75</sup> These identity-based benefits may also be seen in mixed orientation same-sex couples, such as lesbian-bisexual women couples, who have articulated positive effects of marriage on “self-image” by permitting “true freedom of choice.”<sup>76</sup>

Those transitioning into marriage, however, may experience identity-based challenges in terms of identity or self-image.<sup>77</sup> While some may experience “joy and relief” in being able to use the language of marriage, like “husband” and “wife,”<sup>78</sup> others may struggle in the domain of language. Some individuals find vocabulary often associated with marriage to carry with it uncomfortable ties to gender hierarchy or sex-stereotyping.<sup>79</sup> This difficulty may come through in decisions about whether to use marital terms like “husband” and “wife,”<sup>80</sup> but also in terms of social practices like surname choice.<sup>81</sup> Similarly, some have described that they “struggle[d] with the language available to them to describe their partner and their relationship.”<sup>82</sup> Some married individuals have described and “dealt with misgivings about heteronormative marriage by

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<sup>75</sup> Riggle et al., *supra* note 3. Data was collected when twelve states, plus the District of Columbia, recognized same-sex marriage, and from “17 states that did not recognize marriages of same-sex couples at the time of the study.” *Id.*

<sup>76</sup> Pamela J. Lannutti, “*This Is Not a Lesbian Wedding*”: Examining Same-Sex Marriage and Bisexual-Lesbian Couples, 7 J. BISEXUALITY 237, 246–47 (2007); *see also* LANNUTTI, *supra* note 17, at 66 (seeing legal recognition of same-sex marriage as support of one’s bisexual identity).

<sup>77</sup> Rostosky et al., *supra* note 47, at 1034–35.

<sup>78</sup> *Id.*

<sup>79</sup> Kim & Thurman, *supra* note 48 (manuscript at 23).

<sup>80</sup> Some couples have described “[p]erceptions of ‘husband’ and ‘wife’ as markers of outmoded, societal delineation of gender roles.” *Id.* at 26. Couples in the Schecter team research described the association of marital terms with “patriarchal and sex-stereotyped meanings.” Schecter et al., *supra* note 47, at 416.

<sup>81</sup> Kim & Thurman, *supra* note 48 (manuscript at 18) (describing some couples’ “[g]ender-related” concerns about marital name changing “with couples pointing to the influence of feminism or concerns about women being expected to change their names”). Interviewees “also indicated that they would not change their names if they were in different-sex marriages, or they questioned the practice of marital name-changing overall.” *Id.* Some members of couples also described “[i]dentity-based” reasons for keeping their last names upon marriage, like “cultural identification, expressing personal identity, and signifying ties with families of origin.” *Id.* at 16. For discussion of gender and marital naming, *see generally* Kim, *supra* note 21.

<sup>82</sup> Schecter et al., *supra* note 47, at 416; *see also* Rostosky et al., *supra* note 47, at 1033 (“I think part of my mental block was that in the world at large, husband equals master of the house and wife equals the person who picks up the dirty socks. And that didn’t reflect our relationship, so I think that was part of why I struggled.” (quoting a participant in the study)).

defining or redefining marriage-related terms in a way that fit better with their self-concepts.”<sup>83</sup>

Despite ambivalence about using these terms, married individuals have also expressed the broader importance of using marital terms in order to make a supportive statement about same-sex marriage<sup>84</sup> or to engage fully rights associated with marriage.<sup>85</sup>

Identity-based struggles may also manifest themselves in individuals’ perceptions of the impact of marriage on queer identity and culture alongside “a sense of justice and equality at having their same-sex relationships sanctioned in the same way as heterosexual ones.”<sup>86</sup> Some, including older married individuals, have expressed concerns about the “mainstreaming” effects of same-sex marriage, and possible perceptions of same-sex marriage as “an attempt to ‘act like straights’” or “a type of begging for acceptance or validation.”<sup>87</sup> This tension corresponds with longstanding, broader discourse within queer communities about the wisdom and impacts of pursuing same-sex marriage as a civil rights agenda item.<sup>88</sup>

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<sup>83</sup> Lannutti, *supra* note 76, at 248.

<sup>84</sup> See Kim & Thurman, *supra* note 48 (manuscript at 29) (describing couples emphasizing the importance of using the term “wife” as a “public statement about same-sex marriage”); Rostosky et al., *supra* note 47, at 1032; Schechter et al., *supra* note 47, at 416 (explaining that couples expressed that it is “important to claim the same terms used by married heterosexuals”).

<sup>85</sup> Kim & Thurman, *supra* note 48 (manuscript at 28) (recounting an example of a couple’s focus on using the term “husband” as a “right we earned”).

<sup>86</sup> Schechter et al., *supra* note 47, at 418.

<sup>87</sup> Pamela J. Lannutti, *Security, Recognition, and Misgivings: Exploring Older Same-Sex Couples’ Experiences of Legally Recognized Same-Sex Marriage*, 28 J. SOC. & PERS. RELATIONSHIPS 64, 75 (2011) (interviewing married and unmarried same-sex couples, ages fifty-six to seventy-three, in Massachusetts that resided together full time); see also Lannutti, *supra* note 76, at 247–48 (finding similar concerns among bisexual-lesbian couples living in Massachusetts). This tension is also evident in Lee Badgett’s 2009 study concerning married same-sex couples in the Netherlands. See generally M.V. LEE BADGETT, WHEN GAY PEOPLE GET MARRIED 115–51 (2009).

<sup>88</sup> See FRANKE, *supra* note 8, at 7–13. See generally POLIKOFF, *supra* note 14. For a broader discussion of the longstanding discourse and tension within queer communities about pursuing same-sex marriage as a civil rights agenda item, see generally Carlos A. Ball, *This Is Not Your Father’s Autonomy: Lesbian and Gay Rights from a Feminist and Relational Perspective*, 28 HARV. J.L. & GENDER 345, 349 (2005), which describes the critiques in lesbian and gay communities of the pursuit of same-sex marriage, and Ettelbrick, *supra* note 14, at 9. But see Eskridge, *supra* note 49, at 356–57 (noting that marriage equality could provide a future model for heterosexual marriages since “in a same-sex marriage there can be no division of labor according to gender”); Thomas B. Stoddard, *Why Gay People Should Seek the Right to Marry*, OUT/LOOK, Fall 1989, at 9, 9–10 (arguing that all same-sex couples should have the right to marry a partner they choose, and legal recognition of same-sex marriage should be aggressively sought). For an overview of the debate, see Kim, *supra* note 51, at 42–50.

Given the fact that the law has legally treated members of same-sex couples as “single,” absent some private-law mechanism, for example,<sup>89</sup> another area worth consideration is the impact of law on other aspects of one’s sense of self in the transition to marriage.<sup>90</sup> Considerations of this aspect of self are still emerging.<sup>91</sup> The CUPPLES research involving married couples suggests that “an increased sense of psychological security” comes from being recognized as a couple, as opposed to individuals being treated as “single” under the law.<sup>92</sup> In the domain of marital social practice, however, couples may negotiate between individual and couple identity.<sup>93</sup>

Lastly, an additional area for fostering resilience is in the domain of health and well-being. A developed literature already exists regarding correlations between health and marriage, including same-sex marriage.<sup>94</sup> Individuals have

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<sup>89</sup> See Riggle et al., *supra* note 39, at 759–61 (discussing, among others, medical powers of attorney, living wills, and estate planning); Deborah A. Widiss, *Legal Recognition of Same-Sex Relationships: New Possibilities for Research on the Role of Marriage Law in Household Labor Allocation*, 8 J. FAM. THEORY & REV. 10, 22–23 (2016) (“Couples may also create some of the benefits and the security that marriage provides through private contracts or wills. . . . Moreover, ‘unmarried’ same-sex cohabitators are far more likely than different-sex cohabitators to have created marriage-like rights through private contract law . . .”).

<sup>90</sup> Married individuals have been treated variously as more individual or more unitary. In considerations of the state’s approach toward the family, judicial interpretations of the marital relationship have evolved toward treating marriage as consisting of two individuals, rather than a monolithic unit. See *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992) (plurality opinion) (noting that U.S. Supreme Court cases recognize individuals’ Fourteenth Amendment liberty rights, regardless of marital status); *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) (“If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”); see also *Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965) (finding a privacy right for married couples to use contraceptives because “[m]arriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred”). But see Maya Manian, *Lessons from Personhood’s Defeat: Abortion Restrictions and Side Effects on Women’s Health*, 74 OHIO ST. L.J. 75, 97–98 (2013) (arguing that personhood laws will negatively impact married women’s autonomy, and “if the embryo constitutes a legal person with the same status as a born child, fathers could have the very rights of dominion over pregnant women that *Casey* rejected”). In contrast, the law of family dissolution looks to marriage as a financial partnership. See Tait, *supra* note 40, at 1259. These various approaches suggest important implications of how the law views the self in relation to the marital relationship.

<sup>91</sup> For a discussion of individualism in the context of self-presentation practices like marital surnames and marital terms, see generally Kim & Thurman, *supra* note 48.

<sup>92</sup> Rostovsky et al., *supra* note 47, at 1030–31.

<sup>93</sup> Kim & Thurman, *supra* note 48 (manuscript at 16–17) (describing efforts to maintain sense of individuality in marriage).

<sup>94</sup> See generally Ben Lennox Kail et al., *State-Level Marriage Equality and the Health of Same-Sex Couples*, 105 AM. J. PUB. HEALTH 1101, 1101–04 (2015) (examining marriage equality and health of same-sex couples); Erica Kornblith et al., *Marital Status, Social Support, and Depressive Symptoms Among Lesbian and Heterosexual Women*, 20 J.

reported a greater sense of security,<sup>95</sup> and less worry about legal problems after marriage.<sup>96</sup> A similarly robust literature also exists regarding “minority stress” in stigmatized populations.<sup>97</sup> The increased availability of marriage to all same-sex couples permits more extensive inquiry of the intersections of legal recognition, socioeconomic status, and minority stress.

*Couple.* The couple itself serves as an important focus for fostering resilience. Relational ecology literature strongly suggests that the environment surrounding a relationship, including its legal treatment, determines the success of the relationship.<sup>98</sup> This suggests that positive changes in the law surrounding relationships should have positive effects on relationships internally.

In early U.S. marriage impact research, couples have generally reported increased feelings of commitment from legal marriage. Based on research concerning Massachusetts couples, Christopher Ramos, Naomi Goldberg, and Lee Badgett reported that, in a survey conducted by the Massachusetts Department of Public Health (the Health and Marriage Equality in Massachusetts (HMEM) survey), five years after same-sex couples were able to marry in the state, over 72% of married individuals felt more committed to their partners.<sup>99</sup> In 2009, Badgett found that 51% of married individuals reported “increased commitment” as a result of marriage.<sup>100</sup>

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LESBIAN STUD. 157, 157–58 (2016) (showing marriage is associated with lower levels of depression in both lesbian and heterosexual women); Holning Lau & Charles Q. Strohm, *The Effects of Legally Recognizing Same-Sex Unions on Health and Well-Being*, 29 LAW & INEQ. 107, 107–14 (2011) (summarizing health and marriage research); Richard G. Wight et al., *Same-Sex Legal Marriage and Psychological Well-Being: Findings from the California Health Interview Survey*, 103 AM. J. PUB. HEALTH 339, 339–45 (2013) (finding that psychological distress is lower among lesbian, gay, and bisexual individuals who are legally married to a person of the same-sex, compared with those who are not in legally recognized unions); Alexander K. Tatum, *The Interaction of Same-Sex Marriage Access with Sexual Minority Identity on Mental Health and Subjective Wellbeing*, J. HOMOSEXUALITY (June 7, 2016), <http://www.tandfonline.com/doi/pdf/10.1080/00918369.2016.1196991?needAccess=true> [<https://perma.cc/ZM2V-Y39T>] (finding higher levels of self-assessed health for same-sex couples in states allowing legally sanctioned same-sex marriage).

<sup>95</sup> Lannutti, *supra* note 17, at 77–79.

<sup>96</sup> See RAMOS ET AL., *supra* note 47, at 6 (“Nearly half of respondents (48%) [in a 2009 study of Massachusetts legally married individuals] report that being married means that they worry less about legal problems.”); Badgett, *supra* note 47, at 325–27 (reporting that in a 2009 study of 556 people married to a same-sex partner in Massachusetts, 46% said that they “worry less about legal problems” after marriage).

<sup>97</sup> See Rostosky et al., *supra* note 47, at 1020 (collecting studies regarding minority stress for same-sex couples).

<sup>98</sup> See generally Holning Lau, *Beyond Our Hearts: The Ecology of Couple Relationships*, 4 CALIF. L. REV. CIR. 155, 157–59 (2013) (discussing the importance of environment for relationship flourishing).

<sup>99</sup> See RAMOS ET AL., *supra* note 47, at 5; Schecter et al., *supra* note 47, at 413, 417 (reporting that legally married couples described an “unexpected qualitative deepening of commitment” in their relationships and a “deeper sense of commitment to one another”);

Similarly, Ellen Riggle, Robert Wickham, Sharon Rostosky, Esther Rothblum, and Kimberly Balsam found, in their longitudinal study of Vermont civil union couples, that among individuals in long-term same-sex relationships (formed before any state in the United States recognized same-sex marriage), individuals in civil marriages reported higher levels of support from their partner than those not in civil marriages.<sup>101</sup>

The perceived immediate benefits of marriage are likely connected to greater opportunity through marriage “to reflect on their relational goals,” as noted by couples in Lannutti’s research.<sup>102</sup> Relatedly, couples have reported increased feelings of “relational security” from marriage.<sup>103</sup>

Age, relationship duration, and prior experience with seeking legal security may play a role in a couple’s internal experiences of marriage. While some Vermont civil union couples, who subsequently married, expressed “surprise[] by the intense emotion that they felt during their wedding ceremony, even after so many years together,”<sup>104</sup> many married CUPPLES study participants reported little impact on their emotional commitment to each other as a result of marriage.<sup>105</sup> This was likely due to the fact that this commitment was already well established by the time of marriage.<sup>106</sup> This result suggests that examining the role of “life course”<sup>107</sup> in studying intra-relational impacts on younger cohorts’ relational migration would usefully complement existing research that focuses on marital transition experiences of older, long-term couples.<sup>108</sup> This would also permit a more developed inquiry into relational migration impacts within the parent-child relationship, an important site for fostering resilience.<sup>109</sup>

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see also LANNUTTI, *supra* note 17, at 69 (noting that couples describe marriage as providing a chance to show depth of commitment); Lannutti, *supra* note 76, at 249 (describing strengthening of romantic relationship after same-sex marriage and “greater feelings of love”).

<sup>100</sup> Badgett, *supra* note 47, at 327.

<sup>101</sup> See Riggle et al., *supra* note 3.

<sup>102</sup> LANNUTTI, *supra* note 17, at 68–69.

<sup>103</sup> *Id.* at 77–79; Lannutti, *supra* note 87, at 71.

<sup>104</sup> Rostosky et al., *supra* note 47, at 1030. In the same CUPPLES study, Riggle et al. observed few differences based on marital status, likely due to the fact that the long-term couples “had [already] established their relationships prior to marriage availability.” Riggle et al., *supra* note 3.

<sup>105</sup> Rostosky et al., *supra* note 47, at 1035.

<sup>106</sup> See *id.*

<sup>107</sup> See, e.g., Corinne Reczek et al., *Commitment Without Marriage: Union Formation Among Long-Term Same-Sex Couples*, 30 J. FAM. ISSUES 738, 738 (2009) (“Using a life course perspective . . . the authors examine how couples conceptualize and form committed relationships despite being denied the right to marry.”).

<sup>108</sup> See Rostosky et al., *supra* note 47, at 1035–37 (suggesting a need for future research into younger couples’ experiences with marriage).

<sup>109</sup> See Debra Umberson et al., *Challenges and Opportunities for Research on Same-Sex Relationships*, 77 J. MARRIAGE & FAM. 96, 102 (2015) (“[B]ecause having children contributes to relationship stability for different-sex couples, parental status differences

Lastly, to the extent that a relationship's social surroundings affect its health, a further area of inquiry worth studying is how continued experiences of discrimination against married couples or individuals influence resilience within relationships, even in the context of marriage.<sup>110</sup>

### C. Extra-Relational Impacts

Themes in early research regarding impacts of marriage on interactions with others and society—those outside of a couple's primary relationship with each other—suggest a number of opportunities for fostering resilience. Research on early experiences of marriage for same-sex couples suggest that, even post-*Obergefell*, relational migration to marriage may likely have distinct effects on relationships with families of origin, LGBTQ communities, and society in general.

Influences on relationships outside of the couple's primary relationship reveal a broader context of discrimination against same-sex relationships.<sup>111</sup> Social science "minority stress" research also serves as a useful backdrop for understanding opportunities for fostering resilience.<sup>112</sup> This research identifies factors contributing to "the chronic stress that accompanies a stigmatized identity,"<sup>113</sup> including "discrimination, anticipation of rejection, concerns about disclosing their identities, and internalized stigma."<sup>114</sup>

*Relationships with families of origin.* Given the broader context of discrimination against same-sex couples, the couples' immediate encounters with families of origin upon their marriages have been both positive and negative, with family members showing both support and discrimination on the occasion of marriage, sometimes within the same families.<sup>115</sup>

Those in the third wave of the CUPPLES study in 2014 often "reported feeling an increase in social validation of their relationship from others," including positive reactions from their families of origin.<sup>116</sup> Five years after

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between same- and different-sex couples could contribute to differences in relationship stability." (citation omitted)); see also RAMOS ET AL., *supra* note 47, at 8 ("[N]early all respondents (93%) agreed or somewhat agreed that their children are happier and better off as a result of their marriage."); Riggle et al., *supra* note 3 (discussing differing amounts of state recognition for same-sex couples' parental rights, and encouraging future research to take into account such issues).

<sup>110</sup> See a discussion of extra-relational impacts in *infra* Part III.

<sup>111</sup> See, e.g., Rostosky et al., *supra* note 47, at 1035–36 (discussing the impacts of marriage in a "social context that stigmatizes the relationships of same-sex couples" such as prejudicial family members, anticipated discrimination/rejection by strangers, and individuals' "internalized negative feelings").

<sup>112</sup> See *id.* at 1020 (citing studies examining minority stress experiences of same-sex couples).

<sup>113</sup> *Id.* (citing studies).

<sup>114</sup> *Id.*

<sup>115</sup> See, e.g., *id.* at 1027.

<sup>116</sup> *Id.* at 1031–32.

*Goodridge*, Massachusetts couples “report[ed] a high degree of family support associated with their marriage,” with “[n]early nine out of ten respondents (89%) report[ing] that all or most family members supported their marriage.”<sup>117</sup> Moreover, “[w]hen asked about parental reactions, over four-fifths (82%) agreed or somewhat agreed that their parents reacted positively.”<sup>118</sup> Support was higher from siblings and “other family members.”<sup>119</sup> Research by Ellen Schecter and her colleagues, concerning Massachusetts couples, also showed legally married couples feeling “greater acknowledgement of the couple by families and professional peers,”<sup>120</sup> and reporting that “legal marriage changed others’ perceptions of their commitment more than it did their own.”<sup>121</sup>

Alongside reports of support, married individuals in emerging research have also shared experiences of discrimination by family members, resonating with fears expressed by some about expected impacts of marriage.<sup>122</sup> While most reported support, some couples in the CUPPLES research provided “examples of prejudice and rejection from family members” after marriage.<sup>123</sup> Massachusetts couples in Lannutti’s research also “discussed the support and resistance to their marriage from their families-of-origin.”<sup>124</sup>

These findings correspond with the CUPPLES’ team’s findings regarding the responses of heterosexual married siblings of individuals in same-sex couples to the Supreme Court’s decisions in *United States v. Windsor* and *Hollingsworth v. Perry*.<sup>125</sup> Sibling responses ranged from: “(1) ally support; (2) flat support without emotion or elaboration; (3) indifference to or ignorance about the decisions; and (4) disapproval of the decisions.”<sup>126</sup>

Reported experiences with discrimination highlight the ongoing need to foster resilience, even in a context of legal progress. In Abigail Ocobock’s interviews during 2010 and 2011 with gay married men in Iowa, she found that, while two-thirds of men “perceived that getting legally married had a positive impact on their relationships with families of origin,”<sup>127</sup> half of the

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<sup>117</sup> RAMOS ET AL., *supra* note 47, at 7.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Schecter et al., *supra* note 47, at 417.

<sup>121</sup> *Id.* at 414.

<sup>122</sup> See Rostosky, *supra* note 47, at 1027 (“The relationship histories of couples in this sample included painful experiences of prejudice and rejection within their family of origin.”).

<sup>123</sup> *Id.*

<sup>124</sup> Lannutti, *supra* note 76, at 251–52 (“Some couples discussed the support they felt from their families for [same-sex marriage] in general. . . . Other couples also explained the support they felt from family members for their marriage.”).

<sup>125</sup> See generally Jennifer B. Clark et al., *Windsor and Perry: Reactions of Siblings in Same-Sex and Heterosexual Couples*, 62 J. HOMOSEXUALITY 993 (2015).

<sup>126</sup> *Id.* at 998.

<sup>127</sup> Abigail Ocobock, *The Power and Limits of Marriage: Married Gay Men’s Family Relationships*, 75 J. MARRIAGE & FAM. 191, 195 (2013).



men interviewed (the same men who reported positive outcomes) also reported “some kind of negative experience with families of origin surrounding their marriages.”<sup>128</sup> These included “re-experiencing rejection from already unsupportive family members” or, more commonly, “new experiences of rejection from family members who had previously seemed supportive.”<sup>129</sup>

For those who re-experienced rejection, some “admitted that the prospect of marriage led them to hope for greater acceptance.”<sup>130</sup> Negative reactions to marriage, therefore, “forced some men to face the conditional nature of their family bonds again and to relive the pain they felt when they first came out to family members.”<sup>131</sup>

Same-sex marriages prompted many external changes within families. For example, they “prompted heterosexual family members to express views on the relationship more openly, offer and withdraw support, and develop new ways to integrate and exclude the couple in family activities.”<sup>132</sup>

Marriage, for some couples, served an important purpose in enabling them to fight against discrimination in their own families more strongly than before.<sup>133</sup> In addition, the negative responses of families to marriage caused some to assess further and engage in ongoing work on relationships in their families.<sup>134</sup>

One area worth further development is the experience of families of origin on the occasion of a same-sex marriage. For instance, one might imagine perceived buffering effects on a parent’s relationship with her or his peer group or with other family members upon being able to articulate a child’s same-sex relationship in terms of marriage.

*Relationships with society in general.* Research to date on marriage transition impacts strongly suggests that marriage results in greater feelings of validation, security, recognition, and inclusion.<sup>135</sup> These positive effects have

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<sup>128</sup> *Id.* at 198.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 201.

<sup>133</sup> See Ocobock, *supra* note 127, at 201.

<sup>134</sup> See *id.* at 200. In addition to experiences of discrimination and rejection from members of families of origin, some couples have reported challenges in maintaining privacy boundaries post-marriage or post-engagement. See Pamela J. Lannutti, *Same-Sex Marriage and Privacy Management: Examining Couples’ Communication with Family Members*, 13 J. FAM. COMM. 60, 67–70 (2013). The transition to marriage has been observed as resulting in less privacy, thus dissolving boundaries surrounding the couple. This increased permeability of privacy boundaries may be experienced as a stressful loss of control. *Id.* at 67–71. This may have useful implications for understanding marriage transition experiences of many couples, same-sex or different-sex.

<sup>135</sup> See RAMOS ET AL., *supra* note 47, at 7 (reporting increased feelings of validation, security, family support, community engagement, social acceptance, and willingness to be out); RICHMAN, *supra* note 23, at 154 (discussing Massachusetts and California couples’ reported feelings of positive “transformation” in their feelings of “validation” from being

also been reported by those with children.<sup>136</sup> Marriage has been found to increase the willingness of the respondents to be “out” to co-workers and healthcare providers, and to be “out” in situations relating to their children in school.<sup>137</sup> In considering the experiences of same-sex couples post-*Obergefell*, it is also important to examine the discrimination that same-sex couples continue to face, the intersections of social validation effects with other socio-economic status factors, and connections between various forms of social relationships in influencing these social validation effects.

Alongside these overwhelmingly positive effects, some individuals, mostly in early studies of marriage impacts in the United States, expressed fear of discrimination associated with marriage and ongoing discrimination. For example, the members of older couples in Lannutti’s Massachusetts study voiced concern about threats to property or personal safety as a result of increased visibility from marriage.<sup>138</sup> Other couples have expressed concern “that the right to marry would be rescinded.”<sup>139</sup> These concerns are not surprising, given the important but incomplete remedy that marriage provides for longstanding discrimination at the time when the couples were surveyed. Relatedly, Riggle and her colleagues have observed that “the privileged status of marriage as a marker of social integration may enhance positive feelings about identity while not also being able to buffer negative feelings rooted in internalized homonegativity or act as protection against discrimination.”<sup>140</sup>

Recent Williams Institute research demonstrates that extending marriage rights actually increases support for the LGBT community, rather than creating a backlash.<sup>141</sup> Continued fear of discrimination and backlash, including at the interpersonal level of closer social networks, however, may strongly influence people’s feelings of freedom to pursue a legal right.

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married); Badgett, *supra* note 47, at 327–29 (reporting that “65% either agreed or agreed somewhat with the statement, ‘I feel more social acceptance in my community’”); Lannutti, *supra* note 87, at 70–73 (describing Massachusetts older married same-sex couples’ reports of increased sense of security and recognition from marriage); Rostosky et al., *supra* note 47, at 1030–34 (reporting increased legal protection and security, “increased sense of psychological security,” “legal and practical benefits,” and “social validation”).

<sup>136</sup> RAMOS ET AL., *supra* note 47, at 9 (“Many parents reported that their children felt more secure and protected. Others noted that their children gained a sense of stability. A third common response was that marriage allowed children to see their families as being validated or legitimated by society or the government. . . . Parents also reported that marriage made it easier for other people to understand their families.”).

<sup>137</sup> *Id.* at 7.

<sup>138</sup> Lannutti, *supra* note 87, at 75.

<sup>139</sup> Rostosky et al., *supra* note 47, at 1021 (citing Schecter et al., *supra* note 47, at 400–22).

<sup>140</sup> Riggle et al., *supra* note 3.

<sup>141</sup> Andrew R. Flores & Scott Barclay, *Backlash, Consensus, Legitimacy, or Polarization: The Effect of Same-Sex Marriage Policy on Mass Attitudes*, 69 POL. RES. Q. 43, 43 (2015).

In examining the process of relational transition, it is important to note that experiences of social inclusion are strongly influenced by socioeconomic status factors and other types of relationships. Badgett found relationships between socio-economic status factors and experiences of feeling of social inclusion.<sup>142</sup> Race and gender affected “gains in internal feelings of social inclusion” from marriage.<sup>143</sup> Badgett also observed impacts of other relationship strengths on feelings of social inclusion.<sup>144</sup> For example, “[w]hen the respondent’s family was more accepting of his or her partner or of the respondent’s marriage, respondents were more likely to report feeling socially included.”<sup>145</sup>

Lastly, relationships between married couples and LGBTQ communities also provide an additional opportunity for considering resilience in relation migration. In researching the experiences of mixed orientation couples, in which one member of the couple identified as bisexual and the other member as lesbian, some “described feeling more united with the GLBTQ community” from their own marriages and from the “political struggle over [same-sex marriage].”<sup>146</sup> Other couples, however, voiced concern that marriage “cloaked the uniqueness” of their mixed orientation relationships and “increased their sense of being ignored by the GLBTQ community.”<sup>147</sup> The impacts of marriage on various members of the LGBTQ community are worthy of future study.

#### IV. CONCLUSIONS: TOWARD RESILIENCE IN RELATIONAL MIGRATION

The Supreme Court’s historic ruling in *Obergefell v. Hodges* marks an unprecedented opportunity to consider the as-yet-unexamined experiences of relationally migrating couples under nationwide marriage equality. At stake in this inquiry is a broader sense of the various social forces that shape people’s experiences of legal change and formal equality. A more developed account of rights requires consideration of the day-to-day experience of shifting legal

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<sup>142</sup> See Badgett, *supra* note 47, at 332.

<sup>143</sup> *Id.* (reporting larger gains from marriage among whites and men).

<sup>144</sup> *Id.* at 331.

<sup>145</sup> *Id.*

<sup>146</sup> Lannutti, *supra* note 76, at 255. GLBTQ is the acronym for “gay, lesbian, bisexual, transgender, and queer.” *Id.* at 240.

<sup>147</sup> *Id.* at 256; see also RUTH COLKER, HYBRID: BISEXUALS, MULTIRACIALS, AND OTHER MISFITS UNDER AMERICAN LAW 15–18 (1996) (critiquing binary categories regarding gender and race); Ruth Colker, *Bi: Race, Sexual Orientation, Gender, and Disability*, 56 OHIO ST. L.J. 1, 1–3 (1995) (critiquing binary categories regarding gender, race, and disability). For discussion of the concept of bisexual erasure, see generally LANNUTTI, *supra* note 17, at 75; Naomi Mezey, *Dismantling the Wall: Bisexuality and the Possibilities of Sexual Identity Classification Based on Acts*, 10 BERKELEY WOMEN’S L.J. 98, 100–03 (1995); Naomi Mezey, *Response: The Death of the Bisexual Saboteur*, 100 GEO. L.J. 1093, 1093–104 (2012); and Kenji Yoshino, *The Epistemic Contract of Bisexual Erasure*, 52 STAN. L. REV. 353 (2000).

status in pursuit of equality. But as studies of law and society and legal consciousness highlight, law and lived reality are deeply intertwined—change in one domain invites close inspection of the other.

In the legal consciousness tradition of examining people's everyday relationships with legal forms, I have identified some key social aspects of relational migration into marriage, now a possibility for all same-sex couples in the United States.<sup>148</sup> I have sought to shed light on these domains based on emerging social science research pertaining to marriage impacts on same-sex couples.

This research underscores a number of important opportunities for further study by legal scholars and social scientists alike. It also guides lawyers, psychologists, and others working with same-sex couples and families toward ways to foster resilience during and after relational migration.

For example, although this early research indicates strong and expected bolstering effects of marriage, these findings also suggest that socio-economic and racial factors can influence these experiences.<sup>149</sup> Accordingly, as more socioeconomically, racially, and ethnically diverse same-sex couples pursue marriage, researchers will have greater opportunities to disentangle the relationship between marital status, social equality, and socioeconomic factors such as income, race, and education. Impacts of marriage on individuals of color or on lower-income individuals may look different than existing research demonstrates.<sup>150</sup>

This research will provide important insights for policymakers and legal and therapeutic practitioners seeking to buffer adults and children, including those in communities of color, from the effects of minority stress. It can also help uncover the impacts of various types of discrimination on physical and mental health and well-being, building on the work that has already been done on harmful minority stress effects of discriminatory laws.<sup>151</sup>

Additionally, as the most prominent longitudinal study on same-sex couples has been conducted involving couples who have been committed since before Vermont began offering civil union status in 2000,<sup>152</sup> newer research based on younger couples can provide a more comprehensive picture of

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<sup>148</sup> See *supra* Part III.

<sup>149</sup> See, e.g., Badgett, *supra* note 47, at 331 (discussing impacts of race and gender on feelings of social inclusion from marriage).

<sup>150</sup> See Rostosky et al., *supra* note 47, at 1037 (noting that because “all 50 U.S. states have legal marriage for same-sex couples,” now “same-sex marriage will be available across a greater range of income,” and that “it is important that future studies recruit younger couples and couples who are more diverse in terms of socioeconomic status and race/ethnicity to more fully understand the impact of marriage”).

<sup>151</sup> See, e.g., Tatum, *supra* note 94, at 11–12 (reporting, pre-*Obergefell*, lower mental health and negative identity impacts of same-sex marriage bans).

<sup>152</sup> An Act Relating to Civil Unions, Public Act No. 91, 2000 Vt. Acts & Resolves 72 (codified at VT. STAT. ANN. tit. 15, §§ 1201–1207 (2010 & Supp. 2016)).

generational differences in couples' experiences of marriage, as well as the social experiences of parents and young children.

Research bearing on relational migration experiences of parents and children in the same-sex marriage context is sparse at best and invites further development.<sup>153</sup> The relational migration experience for parents and children likely includes negotiations and decision-making aimed at bolstering individual and relationship support.<sup>154</sup>

Lastly, while this Article has focused on the range of social impacts of marriage on individuals and couples, the legal transitional process itself introduces a range of questions and related social impacts, which I defer to explore elsewhere. For example, in the context of legal exclusion followed by piecemeal relationship recognition, same-sex couples have historically sought a variety of mechanisms to secure formal relationship status,<sup>155</sup> including seeking recognition in multiple jurisdictions.<sup>156</sup> Sorting through the legal implications of previous contractual arrangements and formal recognition status forms an important aspect of relational migration—that of confirming status boundaries. In this context, same-sex couples transitioning to marriage must also consider how best to establish parentage status.<sup>157</sup> Lastly, like all couples, same-sex couples must consider the extent to which marital defaults meet their intent, especially since many couples may have entered into marriage from longstanding cohabiting relationships.<sup>158</sup>

Even assuming a certain level of legal knowledge or consciousness by relational migrants, the process of navigating these legal questions brings with it social demands in the form of time, money, and stress. In the context of resilience, policymakers and practitioners must attend to the variety of ways in

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<sup>153</sup> See, e.g., RAMOS ET AL., *supra* note 47, at 9.

<sup>154</sup> For instance, in the realm of social practice, couples who are parents or would-be parents, might make surname decisions, typically facilitated by marriage, in order to convey a parent-child relationship where one might otherwise not be recognized by others. See, e.g., Kim & Thurman, *supra* note 48 (manuscript at 22–23) (discussing influence of children on surname decision-making by same-sex couples in marriage). This need to communicate a family connection through social practice can also be acute in an interracial family context. See generally, e.g., ANGELA ONWUACHI-WILLIG, ACCORDING TO OUR HEARTS: RHINELANDER V. RHINELANDER AND THE LAW OF THE MULTIRACIAL FAMILY (2013).

<sup>155</sup> See *supra* Part II.B.

<sup>156</sup> Wald, *supra* note 26, at 21–22.

<sup>157</sup> See generally NeJaime, *supra* note 28, at 1241–49 (discussing challenges to establishing parentage for same-sex parents); Nancy D. Polikoff, *A Mother Should Not Have to Adopt Her Own Child: Parentage Laws for Children of Lesbian Couples in the Twenty-First Century*, 5 STAN. J. C.R. & C.L. 201, 208–12, 231–55 (2009) (advocating for reformed parentage statutes for children of same-sex parents).

<sup>158</sup> See Wald, *supra* note 26, at 21–22 (discussing issues of retroactive recognition of marriage, nonmarital unions, and common law marriage for purposes of protecting couples' benefits of marriage). See generally Kaiponanea T. Matsumura, *A Right Not to Marry*, 84 FORDHAM L. REV. 1509, 1518–26 (2016) (critiquing states' routine responses to legalization of same-sex marriage by eliminating non-marital statuses).

which social and legal demands on relational migrants can work to impose unique process burdens. These questions of process bring to mind broader considerations about the civil justice gap for affordable legal assistance.<sup>159</sup>

This focus on relational migration brings valuable insight to bear on the socio-legal experiences of the tens of thousands transitioning into marriage post-*Obergefell*. Attention to these lived realities can helpfully navigate the passage between formal and social equality.

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<sup>159</sup> See generally LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET LEGAL NEEDS OF LOW-INCOME AMERICANS (Sept. 2009), <http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/JusticeGapInAmerica2009.authcheckdam.pdf> [<https://perma.cc/Q27R-U4FU>].